IN THE COURT OF APPEAL OF TANZANIA

AT MUSOMA

(CORAM: MKUYE, J.A., MWANDAMBO, J.A. And MAIGE, J.A.)

CIVIL APPEAL NO. 172 OF 2021

PETER JACOB WEROMA & 11 OTHERS .....APPELLANTS

VERSUS

AKO GROUP LIMITED..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania, Labour Division at Musoma)

(Galeba, J.)

dated the 24th day of April, 2020

in

Labour Revision No. 16 of 2019

.....

JUDGMENT OF THE COURT

29th May & 1st June, 2023

MWANDAMBO, J.A.

The High Court sitting at Musoma as a Labour Court dismissed an application for revision from the award of the Commission for Mediation and Arbitration (the CMA) for Musoma which dismissed the appellant's labour dispute premised on retrenchment from employment with the respondent, Ako Group Ltd. Aggrieved, the appellants have preferred the instant appeal.

Briefly, the appellants were employees of the respondent in different positions until 31/05/2018 when their employment contracts were terminated by retrenchment allegedly due to operational requirement. Resentful of the respondent's decision, each of the affected employees preferred a labour complaint before CMA alleging breach of contract by failure to follow a fair procedure before retrenchment. At the end of the arbitration in the dispute, the CMA found no merit in it and dismissed the complaint. Like the CMA, the High Court (Galeba, J – as he then was) dismissed the appellants' joint application for revision which culminated into the instant appeal predicated on two grounds of complaint preferred by Peter Jacob Weroma and 11 unspecified others through Ernest Alfred Mhagama of a trade union called NUMET, Lake Zone Office. For reasons which will become apparent shortly, the determination of the appeal turns on an issue not borne out of the grounds of appeal which spares us from delving into the nitty gritty of the merits of the appeal.

At the hearing of the appeal, Mr. Innocent Michael Ndanga, learned advocate who represented the respondent rose to draw our attention on the validity of the proceedings before the CMA and the resultant award giving rise to an application, proceedings and judgment from which this appeal has emanated. The learned advocate pointed out

three irregularities which, according to him, warranted the Court to exercise its revisional power under section 4 (2) of the Appellate Jurisdiction Act (the AJA) and remitting the matter to the CMA for a fresh determination of the dispute before another Arbitrator.

Mr. Ndanga had three cards on his chest. The first relates to the mandate of representation appearing at page 78 of the record of appeal. He pointed out that, the complainants who lodged the complaints before the CMA appointed one Mwita Robi Mwita to represent them in the matter; CMA/MUS/156/2018 in terms of rule 5 (1), (2) and (3) of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 67 of 2007 (the Mediation and Arbitration Rules). However, he argued that the said Mwita Robi Mwita was neither one of the complainants nor did he give evidence before the CMA on behalf of the persons who appointed him. Besides, he contended that, the two witnesses who testified before the CMA did so on their own behalf which meant that the complaint, subject of the appeal was determined without the evidence of the rest of the complainants. The learned advocate argued that at any rate, the witnesses who testified did so without oath or affirmation which vitiated their respective testimonies. In addition, Mr. Ndanga claimed that the Arbitrator omitted to sign the evidence taken from the witnesses which vitiated it and the resultant award. On the

whole, Mr. Ndanga urged that the three irregularities he pointed out were fatal to the proceedings and award rendered by the CMA justifying its nullification together with the proceedings before the High Court and the judgment which has culminated into the appeal.

For his part, Mr. Alhaji Abubakar Majogoro, learned advocate who represented the appellants was man enough to concede to the irregularities and the way forward proposed by Mr. Ndanga.

Having heard the unopposed arguments and prayers from Mr. Ndanga, we do not wish to belabour on the matter except to the extent it is necessary for our determination. We shall begin our determination with rule 5 (2) of the Mediation and Arbitration Rules which stipulates that:

> *"Where proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to do so."*

It is plain from the above that the rule caters for signing of documents where there are more than one employee in a joint dispute. Contrary to the learned advocate's contention, the rule does not deal with representation which would go as far as authorising the appointed representative to testify on behalf of others. Needless to say, even

though the issue raised does not relate to signing documents, we agree with him that in so far as the said Mwita Robi Mwita was not one of the complainants before the CMA, he could not have been legally appointed to sign documents on behalf of the complainants in the dispute. Everything being equal, the mandate of representation purportedly made under rule 5 (2) of the Mediation and Arbitration Rules was a worthless and an inoperative document so to speak even though there is no evidence that Mwita Robi Mwita signed any document in the capacity of a representative of the complainants or at all. Indeed, as conceded by both learned advocates, Mwita Robi Mwita did not testify before the CMA on behalf of the complainants. In that regard, much as the mandate of representation signing of documents was defective in form and substance, we are far from being persuaded that it vitiated the proceedings before the CMA in any manner whatsoever.

Next for our consideration is the validity of the award from the evidence of two witnesses in a dispute involving 12 complainants. It is common cause that, the CMA heard two of the complainants; Peter Weroma (PW1) and Peter Mwita Waitara (PW2). However, neither PW1 nor PW2 indicated to be testifying for himself and on behalf of other complainants. Yet, the Arbitrator glossed over and closed the complainants' case upon a prayer to do so by the counsel who

represented the complainants. We cannot, but agree that this was a serious irregularity which vitiated the proceedings that followed and the ultimate award. The overall effect was that the other complainants were not heard in a dispute that involved them considering that the resultant award was against them. That was in clear violation of Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 and thus, any decision reached in such violation was, but a nullity. There is no dearth of authorities underscoring the point which may not be necessary to mention but we feel constrained to cite of such authorities. See for instance; **Mbeya-Rukwa Auto parts and Transport Ltd v. Jestina George Mwakyoma** [2003] T.L.R. 251 and **Abbas Sherally v. Abdul Sultan Haji Mohamed Fazalboy,** Civil Application No. 133 of 2002 (unreported).

The foregoing would have been sufficient to nullify the award and remit the matter for a hearing from where it ended immediately after PW2's testimony but we feel constrained to address yet one more disquieting feature in the evidence of the witnesses who testified before the CMA. The complaint by the learned advocate for the respondent was that the evidence was not given on oath or affirmation in violation of rule 25 (1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. No. 67 of 2007. That rule requires proof of

cases before the CMA to be through evidence given under oath. It is significant that, rule 19 (2) of the said Rules enjoins the Arbitrator to administer oaths to any person giving evidence before him.

As submitted by Mr. Ndanga and conceded by Mr. Majogoro, both rules were violated by the CMA. The consequences of such violation have been settled by the Court in its various decisions, amongst others, **Unilever Tea Tanzania Limited v. Davis Paulo Chaula**, Civil Appeal No. 290 of 2019; **Copycat Tanzania Limited v. Mariam Chamba,** Civil Appeal No. 404 of 2020 and **Capital Drilling (T) Ltd v. Alex Barthazali Kabendera**, Civil Appeal No. 370 of 2019 (all unreported). The Court has held that such violation is fatal which renders the proceedings and the award a nullity. With respect, the proceedings and award before the CMA must suffer the same fate as rightly submitted by Mr. Ndanga and conceded by Mr. Majogoro. Accordingly, in the exercise of the Court's revisional power under section 4 (2) of the AJA, we quash the proceedings before the CMA immediately before PW1 started giving evidence to the end and the resultant award. Similarly, we quash the proceedings before the High Court in Revision No. 16 of 2019 as well as the judgment from which this appeal has emanated for being a nullity. As urged by the learned advocates, we direct that the record be

remitted to the CMA for hearing of the dispute afresh in accordance with the law before another Arbitrator.

Given the nature of the dispute giving rise to the appeal, we make no order as to costs. Order accordingly.

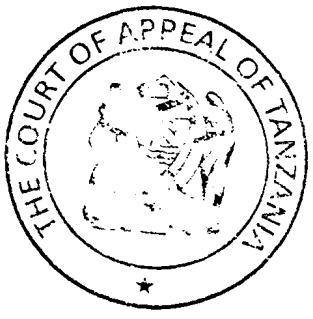
DATED at **MUSOMA** this 31st day of May, 2023.

R. K. MKUYE
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 1st day of June, 2023 in the presence of Mr. Godwill Mweya, learned counsel holding brief for both Mr. Alhaji Majogoro, learned counsel for the Appellants and Mr. Innocent Michael, learned counsel for the Respondent, is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL